

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ROBERT D. SAJEWSKI, #1521136 §
VS. § CIVIL ACTION NO. 4:10cv250
HOPKINS COUNTY CIVIC CENTER, ET AL. §

ORDER ADOPTING REPORT AND RECOMMENDATION

Plaintiff Robert D. Sajewski, an inmate confined at the Beto Unit of the Texas prison system, proceeding *pro se*, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge Don D. Bush, who issued a Report and Recommendation that Plaintiff's Motion to Remand to State Court (docket entry #24) be construed as a request for voluntary dismissal without prejudice pursuant to Fed. R. Civ. P. 41(a)(2) and so be dismissed without prejudice to his refiling in the appropriate state court. Plaintiff has filed objections (docket entry #27).

Plaintiff objects to the Magistrate Judge's construction of his motion and erroneously states that Fed. R. Civ. P. 81 and Texas R. Civ. P. 237a provide for a path to either remove or remand his case to Texas state court. In fact, neither do. Plaintiff misunderstands the concept of removal. A case cannot be removed from federal to state court; only from state to federal court and only under certain circumstances not implicated here. Further, a remand to a state court can only be performed when a case has been removed from that state court in the first instance. Such a posture is recognized by both Fed. R. Civ. P. 81 and Texas R. Civ. P. 237a. Nonetheless, Plaintiff still desires his case to be taken out of the federal court and placed in the state court, which, he admits, is the

court “which has subject-matter jurisdiction” over his complaint. *See* Objections at 2. If this Court lacks subject matter jurisdiction, it cannot hear this case in any event and must dismiss it. *See Randal D. Wolcott, M.D., P.A. v. Sebelius*, 635 F.3d 757, 762 (5th Cir. 2011) (citing Fed. R. Civ. P. 12(h)(3)). Thus, the Magistrate Judge was correct in construing Plaintiff’s motion as one to voluntarily dismiss.

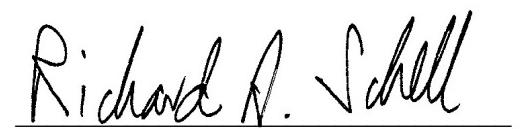
Having made a *de novo* review of the objections raised by Plaintiff to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff’s objections are without merit. Accordingly, the Court adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court. It is therefore

ORDERED that the Plaintiff’s Motion to Remand to State Court, construed as a Motion to Voluntarily Dismiss Without Prejudice to Re-Filing in State Court (docket entry #24) is hereby **GRANTED**. It is further

ORDERED that this case be **DISMISSED WITHOUT PREJUDICE** to Plaintiff’s re-filing in Texas state court. It is finally

ORDERED that all motions not previously ruled on are hereby **DENIED**.

SIGNED this the 30th day of March, 2012.



RICHARD A. SCELL
UNITED STATES DISTRICT JUDGE